

**FILED
DISTRICT COURT OF GUAM**

NOV 14 2007 11:20

**JEANNE G. QUINATA
Clerk of Court**

LAW OFFICE
THOMAS McKEE TARPLEY
A Professional Corporation
Bank of Hawaii Building
134 West Soledad Avenue, Suite 402
Hagatna, Guam 96910
Telephone: (671) 472-1539
Facsimile: (671) 472-4526
Electronic mail: tarpley@guam.net

FORREST BOOTH (Cal. Bar No. 74166) (Admitted *pro hac vice*)
RYAN C. DONLON (Cal. Bar No. 229292) (Admitted *pro hac vice*)

SEVERSON & WERSON

A Professional Corporation

A Professional Corporation
One Embarcadero Center, Suite 2600

One Embarcadero Center,
San Francisco, CA 94111

Telephone: (415) 398-3344

Faxsimile: (415) 956-0439

Fax machine: (415) 556-0433

Electronic mail: rcd@severson.com

Electronic mail: ted@sevenson.com

Attorneys for Defendant, Cross-Claimant and

Counterclaimant S.J. GARGRAVE SYNDICATE 2724

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IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

UNITED STATES OF AMERICA.

Case No.: 1:06-CV-00011

Plaintiff.

vs.

**INCHCAPE SHIPPING SERVICES GUAM,
LLC,**

**EX PARTE APPLICATION FOR
ORDER TO SHORTEN TIME ON S. J.
GARGRAVE'S MOTION FOR LEAVE
TO FILE THIRD-PARTY COMPLAINT
AGAINST NAVIGATORS
PROTECTION & INDEMNITY**

Plaintiff in Intervention,

VS

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724, *in
personam*,

Defendants.

Complaint Date: April 19, 2006
Trial Date: May 12, 2008

AND CROSS-CLAIMS, COUNTERCLAIM, AND CLAIM IN INTERVENTION

S. J. GARGRAVE SYNDICATE 2724,
Third-Party Plaintiff,
vs.
NAVIGATORS PROTECTION &
INDEMNITY,

Third-Party Defendant

I. APPLICATION FOR ORDER SHORTENING TIME

Pursuant to Local Civil Rule 7.1(k), S. J. GARGRAVE SYNDICATE 2724 (“Gargrave”) hereby applies this honorable court for an order shortening the briefing schedule¹ set forth in Local Civil Rule 7.1(d)(2) in regards to Gargrave’s motion for leave to file third-party complaint against NAVIGATORS PROTECTION & INDEMNITY (“Navigators”). Gargrave makes this request so that Navigators can be made a party before the scheduled mediation of this action, presently set for December 4 and 5, 2007. Navigators’ inclusion in the mediation will serve the interests of justice and greatly facilitate the resolution of this action, as well as the related action, *Jose D. Leon Guerrero Commercial Port, et. al. v. Marwan Shipping & Trading Co., LLC et. al.*, Civil Action No. 07-00010 (“Pier Damage Claim”).

Local counsel for opposing parties are:

1. Mike W. Schwab, Esq.
 2. Lawrence T. Teker, Esq.
 3. David P. Ledger, Esq.
 4. Thomas C. Sterling, Esq.
 5. Thomas M. Tarpley, Jr., Esq.

On November 13, the undersigned contacted all attorneys of record by email, attaching copies of all documents to be filed on this motion in compliance with L.R. 7.1(j). As of the time

¹ Due to the same time constraints necessitating this application, Gargrave waives oral argument on this application as well as the underlying motion for leave to file the third-party complaint against Navigators.

1 of filing, only counsel for Marwan has responded by stating Marwan will not oppose these
2 motions.

3 Gargave respectfully submits the following statement of facts, points, and authorities in
4 support of its application for an order shortening time.

5 **II. STATEMENT OF FACTS**

6 The genesis of this action is the grounding of the M/V AJMAN 2 (“AJMAN 2”) at Family
7 Beach in Apra Harbor, Guam, after she broke free of her moorings and beached. Plaintiff
8 UNITED STATES OF AMERICA (“United States”) allegedly incurred expenses in retaining
9 salvors/wreck-removers TITAN SALVAGE (“Titan”) to remove the AJMAN 2 from Family
10 Beach.

11 The United States then filed suit (the “Pollution Claim”) against the owners/operators of
12 the AJMAN 2, MARWAN SHIPPING & TRADING CO., LLC (“Marwan”) and FIVE SEAS
13 SHIPPING CO., LLC (“Five Seas”), and against Gargrave as the alleged financial-backer of the
14 Certificate of Financial Responsibility (“COFR”) that Marwan and Five Seas procured for the
15 AJMAN 2 to enable the ship to enter United States waters.

16 On July 24, 2006, Gargrave filed a Third-Party Complaint against Navigators and AL-
17 BUHAIRA NATIONAL INSURANCE COMPANY (“Al-Buhaira”). (Declaration of Forest
18 Booth (“Booth Decl.”), ¶ 3.) Gargrave’s Third-Party Complaint alleged that Navigators had
19 misrepresented material facts to Gargrave on Marwan’s and Five Seas’ behalves, and failed to
20 disclose other material facts, during the application for the COFR and policy of pollution
21 insurance underwritten for the AJMAN 2 by Gargrave. (Booth Decl., ¶ 3.) Discovery later
22 revealed that these were not viable claims against Navigators. (Booth Decl. ¶ 3.) Accordingly,
23 Gargrave dismissed its third-party complaint against Navigators, without prejudice, on or about
24 February 1, 2007. (Booth Decl. ¶ 4.) After another claim was dismissed by the Court, Navigators
25 is no longer a party to this action. (Booth Decl. ¶ 11.)

26 Meanwhile, the parallel suit Pier Damage Claim, arising from the same set of operative
27 facts, was proceeding in this Court. Prior to being moored in Apra Harbor, the AJMAN 2 had
28 been tied up at, and caused damage to, F-5 Pier, which is owned by the JOSE D. LEON

1 GUERRERO COMMERCIAL PORT ("Port") and insured by M. J. HARRINGTON
2 SYNDICATE 2000 ("Harrington Syndicate"). The Port and Harrington Syndicate sued Marwan,
3 Five Seas, Al-Buhaira, and Navigators in that lawsuit.

4 Harrington Syndicate and Gargrave are represented by the same counsel in the respective
5 actions. (Booth Decl. ¶ 6.) After Gargrave dismissed Navigators from the Pollution Claim, it
6 became aware through discovery in the Pier Damage Claim that Titan performed and billed for
7 services in salvaging the vessel and for wreck removal. (Booth Decl. ¶¶ 7 & 8.) Wreck removal
8 is specifically covered by the insurance that Navigators extended to Marwan ((Booth Decl. ¶¶ 7
9 & 8.) As such, Navigators is directly liable for some of the costs sought in the Pollution Claim,
10 and should be made a party thereto.

11 All parties in the Pier Damage Claim have agreed to a mediation of the dispute, to be held
12 in London, England, the week of December 3, 2007. (Booth Decl. ¶ 9.) Counsel are discussing
13 resolving that matter, and it is possible that the case will be settled before the mediation convenes.
14 (Booth Decl. ¶ 9.) Navigators, through their San Francisco-based counsel, have agreed to
15 participate in that mediation. (Booth Decl. ¶ 9.)

16 Gargrave and Harrington Syndicate are syndicates of Underwriters at Lloyds, London.
17 (Booth Decl. ¶ 10.) From time to time the lead claims adjuster at Gargrave has had direct
18 conversations about the AJMAN 2 claims with employees of Navigators in London. (Booth
19 Decl. ¶ 10.) Gargrave was told on a number of occasions that Navigators would be willing to
20 engage in a mediation together, as a package. (Booth Decl. ¶ 10.) Indeed, it was the
21 understanding of Gargrave and Harrington Syndicate that one of the reasons the parties agreed to
22 set aside two days for the London mediation was that one day would be devoted to resolving the
23 Pier Damage Claim, and the other the Pollution Claim. (Booth Decl. ¶ 13.) However, in late
24 October and November 2007, Navigators' counsel suddenly informed counsel for Gargrave and
25 Harrington Syndicate that Navigators, even though it can attend both mediations, is no longer
26 interested in mediating the Pollution Claim because Navigators is no longer a party this lawsuit.
27 (Booth Decl. ¶¶ 12 & 15.)

28

These actions are ripe for settlement, provided that Navigators comes to the table. (Booth Decl. ¶ 14.)

III. POINTS & AUTHORITIES

Gargrave has filed concurrently a motion for leave to implead Navigators as a third-party defendant in this admiralty action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure. Gargrave's third-party action against Navigators is meritorious, and an accelerated adjudication of that motion is necessary in order to bring Navigators to the negotiating table on December 4 in London so that the parties may reach an informal, universal settlement of this action and the Pier Damage Claim.

Ordinarily, upon the filing of a motion not set for oral argument, “the opposing party shall have fourteen (14) days from the date of the filing of the Motion to serve and file an Opposition...” and the moving party seven days thereafter to reply (Local Civil Rule, 7.1(d)(2)(A) & (B).) However, departures from the normal briefing schedule are appropriate on a showing of mere good cause, and may be determined on an ex parte basis. (Local Civil Rule, 7.1(k).) Applications for orders shortening time permitted or required by these Local Rules or the Federal Rules of Civil Procedure for the filing of any paper or pleading or the doing of any act shall be supported by a certificate stating the reasons therefore.” (Local Civil Rule, 7.1(k).)

Good cause is easily demonstrated in the facts discussed above. Gargrave has a meritorious claim against Navigators. But this matter is rapidly moving towards an informal resolution. Navigators' involvement at the upcoming mediation will greatly facilitate the likelihood of a universal settlement. Therefore, it is in the interest of all parties that this honorable court review the papers in support and opposition of Gargrave's motion on a shortened time. Gargrave seeks a resolution well in advance of the December 4, 2007 mediation.

Setting the parties' briefing schedule is a matter inherently within the sound discretion of the court. In order that this court may reach a determination on Gargrave's motion for leave to file its third-party complaint as to Navigators in sufficient time for the December 4 mediation in London, especially in light of the intervening court holidays, Gargrave is willing to waive oral argument. Gargrave also ask that Navigators' date to file an opposition be shortened from 14

1 days to 9 calendar days. Gargrave, in turn, will stipulation to file its reply brief within 4 court
2 days of Navigators' service of its opposition.

IV. CONCLUSION

4 Gargrave respectfully requests the court to set a shortening briefing schedule so that an
5 adjudication of its motion for leave to implead Navigators as a third-party defendant may be
6 determined on shortened time.

Dated this 14 day of November, 2007.

THOMAS MCKEE TARPLEY,
Attorney for Defendant, Cross-Claimant
and Counterclaimant S. J. GARGRAVE
SYNDICATE 2724

CERTIFICATE OF SERVICE

I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on November 14 2007, I caused to be served a true and correct copy of the EX PARTE APPLICATION FOR ORDER TO SHORTEN TIME ON S. J. GARGRAVE'S MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT AGAINST NAVIGATORS PROTECTION & INDEMNITY, to the following:

Mike W. Schwab, Esq.
OFFICE OF THE U.S. ATTORNEY
108 Hernan Cortez Avenue, Suite 500
Hagatna, Guam 96910

R. Michael Underhill
Attorney in Charge, West Coast Office
MIMI MOON
Trial Attorney
Torts Branch, Civil Division
U.S. DEPARTMENT OF JUSTICE
450 Golden Gate Avenue, Room 7-5395
P.O. Box 36028
San Francisco, CA 94102-3463
[Courtesy copy]

Attorneys for Plaintiff and Counterdefendant United States of America

Lawrence J. Teker, Esq.
TEKER TORRES & TEKER, P.C.
Suite 2-A, 130 Aspinall Avenue
Hagatna 96910-5018, Guam

John E.D. Powell, Esq.
CAIRNCROSS & HEMPELMANN, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
[Courtesy copy]

Attorneys for Defendants and Cross-Defendants Marwan Shipping & Trading Co.; Five Seas Shipping Co., LLC; and Al-Buhaira National Insurance Company

Thomas C. Sterling, Esq.
BLAIR STERLING JOHNSON MARTINEZ &
LEON GUERRERO, P.C.
Suite 1008, DNA Building
238 Archbishop F.C. Flores Street
Hagatna, Guam 96910-5205

Stanley L. Gibson, Esq.
GIBSON ROBB & LINDH LLP
100 First Street, 27th Floor
San Francisco, CA 94105
[Courtesy copy]

*Attorneys for Defendant Navigators Insurance Co., dba
Navigators Protection & Indemnity*

1 David P. Ledger, Esq.
2 Elyze J. McDonald, Esq.
CARLSMITH BALL LLP
3 Bank of Hawaii Building, Suite 401
134 West Soledad Avenue
4 Hagatna, Guam 96910

5 *Attorneys for Third Party Defendant Inchcape Shipping Services Guam LLC*

6 Dated this 14th day of November, 2007.

7
8 
9
10 DOROTHEA QUICHOCHO